



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: DeHorn Corporation--Request for Reconsideration

File: B-232059.2

Date: September 28, 1988

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### DIGEST

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

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### DECISION

DeHorn Corporation requests reconsideration of our decision, DeHorn Corp., B-232059, Aug. 9, 1988, 88-2 CPD \_\_\_\_\_, in which we dismissed DeHorn's protest of the award of a contract to Govern Service, Inc., the low bidder under invitation for bids (IFB) No. DAKF27-88-B-0014, issued by the United States Army, Fort Meade, Maryland, for laundry services. We deny the request.

DeHorn, a small disadvantaged business (SDB), was the second low bidder in the procurement, which was set aside for small businesses. DeHorn protested that it should have received the award because it was entitled to the benefit of a 10 percent evaluation preference for SDB's. The preference was provided for in rules issued by the Department of Defense (DOD) to implement section 1207 of the National Defense Authorization Act for FY 1987, Pub. L. No. 99-661, 100 Stat. 3973, and section 806 of Pub. L. No. 100-180 (the DOD Authorization Act for FY's 1988 and 1989). See 53 Fed. Reg. 20630 (1988) (to be codified at 48 C.F.R. § 219.7000).

We dismissed the protest without obtaining a report from the Army, because it was clear from material furnished by the protester that the protest was without legal merit. 4 C.F.R. § 21.3(m) (1988). We noted that under a previously issued interim rule, 53 Fed. Reg. 5126 (1988), the evaluation preference applied to solicitations issued on or after March 21, 1988. We then pointed out that under the more recent rules referenced above, the evaluation preference shall not apply to total small business set-

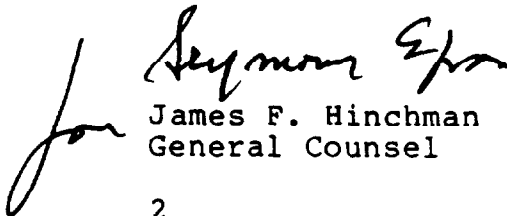
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asides. These rules were applicable to pending solicitations whose bid opening date was after June 6. Since the bid opening date of the protested total small business set-aside was June 22, we held the evaluation preference did not apply and the protester had no legal basis for claiming its benefits.

In its request for reconsideration, DeHorn states that "it came to the attention" of its president that the IFB, issued March 22, 1988, did not contain a clause entitled "Notice of Evaluation Preference for Small Disadvantaged Business Concerns," required by the regulation in effect at the time the IFB was issued. DeHorn alleges that it brought the omission to the attention of agency officials during telephone conversations and meetings in March and April 1988, and was assured that the evaluation preference would apply even though the IFB did not contain the evaluation preference clause. DeHorn states that it relied on these assurances in pricing its bid, and complains that it was never notified when the regulations changed, eliminating the evaluation preference for total small business set-asides. DeHorn asserts that it would have reduced its bid if it had been aware that the evaluation preference would not apply.

Publication of a regulatory provision in the Federal Register puts all parties, bidders and contracting activity, on at least constructive notice of its existence. See Western Filament, Inc., B-192148, Sept. 25, 1978, 78-2 CPD ¶ 226. Since the regulation which eliminated the evaluation preference for total small business set-asides was published in the Federal Register on June 6, 1988, DeHorn cannot successfully argue either that it had no knowledge of the elimination of the evaluation preference for total small business set-asides, or that the agency could properly consider the evaluation preference. See Tri-State Laundry Services, Inc. d/b/a Holzberg's Launderers and Cleaners, B-218042, Feb. 1, 1985, 85-1 CPD ¶ 127. the oral advice given DeHorn in March and April was correct at the time it was given but became irrelevant following the June 6 change to the regulations.

As DeHorn has not presented evidence that our original decision was based on legal or factual errors, the request for reconsideration is denied. 4 C.F.R. § 21.12(a).

  
James F. Hinchman  
General Counsel